

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VIRGINIA MCCANN	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 02-6079
	:	
CITY OF PHILADELPHIA, <i>et al.</i> ,	:	
Defendants.	:	

MEMORANDUM AND ORDER

Fullam, Sr. J.

September , 2004

Plaintiff, a police officer, sued the City of Philadelphia and Captain Thomas Healy claiming that her termination was motivated by sex discrimination and in retaliation for the complaint of physical abuse she lodged against her boyfriend, another police officer. Defendants contend that Plaintiff was dismissed because, among other things, she allegedly visited a neighbor who she knew ran a prostitution escort service out of his apartment, relayed to him information she learned in a training seminar about the conduct of vice investigations, allowed him to handle her firearm, and provided Internal Affairs with misleading and inaccurate statements about her knowledge of the criminal activity. The investigation of Plaintiff began after an anonymous call to the Pennsylvania Crime Commission. Defendants have now moved for summary judgment, which I will grant.

Plaintiff cannot prevail on her discrimination claim because she has produced no evidence that she was discriminated against because she is a woman. The City may have been wrong to fire her (and an arbitrator so found), but "it is not enough for a plaintiff to show that the employer's decision was wrong or mistaken, because the issue is whether the employer acted with discriminatory animus." Abramson v. William Paterson Coll. of N.J., 260 F.3d 265, 283 (3d Cir. 2001).

Although Defendants gloss over Plaintiff's initial burden, the record reveals that Plaintiff has not established a *prima facie* case of discrimination. In order to do so, she must show that she belongs to a protected class, that she was qualified for the position, and that people who were not in the protected class were treated more favorably. Goosby v. Johnson & Johnson Med., Inc., 228 F.3d 313, 318-19 (3d Cir. 2000). Plaintiff has produced no evidence that similarly situated male police officers were treated differently. She argues only that the officer she accused of domestic abuse was not fired, but the allegations against him are not similar to those that Plaintiff faced. Under Title VII, "to be deemed similarly situated the individuals with whom a plaintiff seeks to be compared must have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." Anderson v. Haverford

College, 868 F. Supp. 741, 745 (E.D. Pa. 1994) (citations omitted). There is no evidence that male police officers charged with the same sort of offenses as Plaintiff were not terminated. Miller v. Delaware Dep't of Probation and Parole, 158 F. Supp. 2d 406, 411 (D. Del. 2001), *aff'd*, 41 Fed. Appx. 581, 584 (3d Cir. 2002) (unpublished). Therefore, Defendants are entitled to summary judgment on the discrimination claim.

The retaliation claim also fails. Plaintiff alleges that Defendants retaliated against her for making a claim of domestic abuse against a male police officer, and that this constituted discrimination "because of sex." Plaintiff asserts, without citation to any cases, that "[h]er complaint that [the other police officer], a male, assaulted her in a domestic dispute was within the zone covered by the law." Plff. Mem. Opp. at 9. It is not. Under Title VII, an employer may not discriminate against any employee "because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a). To establish a *prima facie* claim of retaliation, Plaintiff must show that "she is engaged in protected activity, that the employer took an adverse employment action against [her], and that there is a causal connection between the protected activity and the adverse employment

action." Goosby, 228 F.3d at 323. The complaint against the other officer was *not* a charge of an unlawful employment practice under Title VII. Plaintiff made no charge of an unlawful employment practice until after she was fired. Therefore, summary judgment will be granted on this claim as well, and on Plaintiff's claim under the Pennsylvania Human Relations Act, which rises or falls with her Title VII claim.

Plaintiff's final claim is a First Amendment retaliation claim under section 1983 against Captain Healy. She alleges that he retaliated against her for her complaint of domestic abuse by a male police officer. Assuming that Plaintiff's report of domestic abuse constitutes a matter of public concern, see Azzaro v. County of Allegheny, 110 F.3d 968, 981 (3d Cir. 1997) (*en banc*), there is no evidence that any retaliation occurred. The investigation of Plaintiff began months before the abuse complaint, and it would require unreasonable speculation for a jury to link the two matters.

An order follows.

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O R D E R

AND NOW, this        day of September, 2004, upon consideration  
of Defendants' Motion for Summary Judgment and the response  
thereto,

IT is ORDERED that the Motion is GRANTED. For the reasons  
stated in the accompanying memorandum, JUDGMENT is entered IN  
FAVOR OF DEFENDANTS, THE CITY OF PHILADELPHIA AND CAPTAIN THOMAS  
HEALY, and AGAINST PLAINTIFF, VIRGINIA A. MCCANN. The Clerk is  
directed to mark the case CLOSED.

BY THE COURT:

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Fullam, Sr. J.